

APPLICANTS:
Michele and Kenneth Mitchell

REQUEST:
Variance for an existing deck located
within the Natural Resource District buffer

HEARING DATE: February 4, 2004

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS
Case No. 5393

ZONING HEARING EXAMINER'S DECISION

APPLICANTS: Michele and Kenneth Mitchell

LOCATION: 2978 Siwanoy Drive – Forest Oaks subdivision, Edgewood
Tax Map: 066 / Grid: 3C / Parcel: 0200 / Lot: 58
First Election District

ZONING: R2/Urban Residential District/Conventional with Open Space/
Natural Resource District (R2/COS)

REQUEST: Variance pursuant to Sections 267-41D(5)(e) and 267-41D(6) of the
Harford County Code to allow an existing deck within the 75 foot Natural
Resource District Buffer.

TESTIMONY AND EVIDENCE OF RECORD:

Kenneth Mitchell, a Co-Applicant, testified that he and his wife had purchased their single-family residence, located on .261 acres of property, approximately one year ago. In order to make additional room for their children, the Applicants constructed a deck to the rear of their house. The deck is approximately 11 feet deep by 35 feet wide. The Applicant stated that he and a neighbor constructed the deck, not knowing that a permit was necessary.

The Applicant testified that his back yard, at the time he moved into his property, was very wet and virtually unusable. The condition of his back yard, combined with the ongoing construction of other homes to his front and sides motivated him, in part, to construct a deck to create additional outdoor play room. While his back yard is now in grass, it continues to be somewhat wet.

Mr. Mitchell testified that his back yard is impacted by a natural resource buffer area that comes to within approximately 9 feet of the back of his house. Mr. Mitchell testified that he believed the buffer came closer to his house than any others in the neighborhood. For that reason, he believes his lot is unique. Mr. Mitchell testified that there are other homes in the area which have similar rear decks.

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For the Department of Planning and Zoning testified Anthony McClune. Mr. McClune testified that the existence of the natural resource buffer area would allow an 8 foot deep deck only. According to Mr. McClune, this would be a much shallower deck than others in the neighborhood. The deck which exists on Mr. Mitchell's property is similar in appearance to other decks in the neighborhood.

Mr. McClune described the back yard of the subject property as being impacted by what appears to be a major drainage swale. That swale is adjacent, to its rear, to a forest retention area. Mr. McClune stated that the natural resource buffer impacts the Mitchell property to a much greater degree than any other lot in the neighborhood, and the Mitchell property is the only property which cannot have a 12 foot deck because of the natural resource area.

Mr. McClune, and the Harford County Department of Planning and Zoning staff, believe that the granting of the variance would have no adverse impact on the adjoining property, or on the purposes of the Zoning Code. A letter in the file from the Harford Soil Conservation District indicates no objection by it, but that any proposed landscaping be of species that acts as a transition back into the natural vegetation. No comments were received from the Maryland Department of the Environment.

No testimony or evidence was presented in opposition.

APPLICABLE LAW:

The Applicants are requesting a variance to Section 267-41D(5)(e), which states:

"Nontidal wetland shall not be disturbed by development. A buffer of at least seventy-five (75) feet shall be maintained in all areas adjacent to wetlands."

The applicable variance is contained at Section 267-41D(6) of the Harford County Code:

"Variances. The Board may grant a variance to Subsection D(3), (4) or (5) of the Natural Resource District regulations upon a finding by the Board that the proposed development will not adversely affect the Natural Resource District. Prior to rendering approval, the Board shall request advisory comments from the Zoning Administrator, the Soil Conservation Service and the Department of Natural Resources."

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

While the deck was completed without a permit, it is no different from many decks throughout Harford County. There was testimony that the deck is consistent in construction and appearance to other decks in the specific neighborhood of the Applicant.

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Furthermore, the situation in which the Applicants find themselves is the type of situation which the variance provision was designed to grant relief to. The Applicants cannot make an improvement to their property which is otherwise allowed by the Code. The 12 foot deep deck would normally be allowed in their single family residential development without a variance. No normal setback would be impacted. Nevertheless, because of the operation of the natural resource buffer area, and to a lesser extent the forest retention area, they are prohibited from doing what they could otherwise do, i.e. build a deck. No other individual in their neighborhood is impacted to such a degree. Therefore, the uniqueness of their lot, i.e., the extent of the natural resource buffer area, causes a practical difficulty, i.e., they cannot build a deck which would otherwise be allowed by the Code.

There would be no impact on any adjoining neighbor; there would be no adverse impact on the neighborhood; and the granting of the variance would not impair the purpose of the Harford County Zoning Code nor the Natural Resource District.

CONCLUSION:

For the above reasons, the recommended requested variance be granted, subject to the following:

1. The Applicants obtain all necessary permits and all inspections for the deck.
2. The Applicants provide landscaping around the base of the deck. A landscaping plan shall be submitted to the Department of Planning and Zoning for review and approval. To the extent possible, the landscaping plan shall meet the recommendations of the Harford Soil Conservation District, which recommends the landscaping provide species that act as a transition back into the natural vegetation contained at the rear of the property.

Date February 19, 2004

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner